

STATE OF IDAHO SPECIAL CONTRACT TERMS AND CONDITIONS FOR TELECOMMUNICATIONS SERVICES

These State of Idaho Special Contract Terms and Conditions for Telecommunications Services supplement the State of Idaho Standard Contract Terms and Conditions. In case of conflict, these State of Idaho Special Contract Terms and Conditions for Telecommunications Services prevail.

1. GENERAL TERMS AND CONDITIONS

A. DEFINITIONS: Unless the context clearly requires otherwise, the definitions set forth in the State of Idaho Standard Contract Terms and Conditions shall apply to capitalized terms used in these State of Idaho Special Contract Terms and Conditions for Telecommunications Services. In addition, the following terms shall have the following meanings when used in these State of Idaho Special Contract Terms and Conditions for Telecommunications Services.

(1) Agreement: A contract or purchase order, including solicitation or specification documents, the State of Idaho Standard Contract Terms and Conditions, and the State of Idaho Special Contract Terms and Conditions for Telecommunications Services, as well as any amendments mutually agreed upon by both parties.

(2) Major Trouble:

(a) "Major Trouble" is defined as any one or a combination of the following:

- (i) The loss of a Critical Business Function;
- (ii) The failure of a Critical Circuit; or
- (iii) The loss of data service at a Critical Facility.

(b) "Critical Business Function" is defined as a discipline directly related to life safety, public safety, finance or revenue and taxation.

(c) "Critical Circuits" are defined as any circuit with a capacity of T1 or greater.

(d) "Critical Facilities" are defined as any location with circuit connection of DS3 or greater.

Notwithstanding the State's identification of Critical Circuits, priority for restoring service in the event of a Service outage is governed by Telecommunications Service Priority ("TSP") regulations. National Security Emergency Preparedness ("NSEP") telecommunications services are given first priority for restoration in the event of service outages. Service will be restored to all other customers pursuant to the terms of the applicable service level agreements.

(3) Minor Trouble: "Minor Trouble" is defined as network problems not classified as Major Trouble but which fail to meet performance objectives identified in the Agreement.

(4) Provider: The sole proprietorship, partnership, consortium, L.L.C., corporation or other form of business entity that is obligated under the Agreement to offer, install and maintain Telecommunications Services to Users.

(5) Service(s): Those Telecommunications Services and other related services ordered by User and provided by the Provider pursuant to a Service Order, subject to the terms and conditions of the Agreement and the applicable Service Order.

- (6) **Service Order:** A document provided by the User to Provider which details the type of Service desired and provides all information necessary for Provider to provide the Service to User.
- (7) **State:** The Department of Administration, Division of Purchasing, acting as statutory agent for the ordering agency.
- (8) **Telecommunications Services:** The transmission of two-way interactive signs, signals, writing, images, sounds, messages, data or other information of any nature by wire, radio, light waves or other electromagnetic means, which are offered to or for the public, or some portion thereof, for compensation.
- (9) **User:** The ordering entity or State agency.

B. SERVICES

- (1) **Types of Service:** The Services acquired pursuant to the Invitation to Bid or Request for Proposals and an applicable Service Order may include, but are not limited to, Asynchronous Transfer Mode ("ATM"), frame relay, private line, hosting, Private Network Satellite, Private Network xDSL and ATM/DSL Hybrid Services (Layer 2 connectivity), network management services, and other Telecommunications Services. The Services do not include any Customer Premises Equipment ("CPE").
- (2) **E-Rate Service:** The Provider acknowledges and agrees that Telecommunications Services offered under the Agreement may be eligible for E-Rate discounts. Qualifying schools or libraries may acquire Services offered through the Agreement, and related E-Rate discounts may apply. To qualify for E-Rate discounts, schools or libraries must comply with all program requirements, including but not limited to, the E-Rate application process, technology plan approval, reimbursement and invoicing prerequisites. Upon receipt of all properly executed E-Rate forms and related documents, Provider will apply the E-Rate discounts. Provider's sales account team and the State's E-Rate coordinator will work together to ensure timely application of discounts under the USF E-Rate program.

C. PRICING: As designated in the Agreement itself.

D. LATE PAYMENT AND EARLY TERMINATION

- (1) **Late Payment:** A late charge shall be assessed and accrue at the rate determined in the application of Idaho Code Section 63-3045 commencing ten (10) calendar days after payment is due. Payments will be made in accordance with Idaho Code Section 67-2302(2).
- (2) **Early Termination:** The User may terminate for any or no reason at any time any Service Order for ongoing Services.
- (a) If early termination is prior to installation of Service as requested in a valid Service Order, charges shall be those actual expenses incurred by Provider through the date of termination.
- (b) If the State terminates a Service, or individual circuit, during the first twelve (12) months after commencement of any Service, for any reason other than what is described in sections 1.E.(1) [For Cause] and 1.E.(2) [For Non-Appropriation], the State shall pay a termination charge of one hundred percent (100%) of the monthly recurring charges for that Service (or the applicable fraction thereof), multiplied by the number of months remaining in the first twelve (12) months of the Service term, plus a termination charge of fifty percent (50%) of the monthly recurring charges for the Service (or the applicable fraction thereof), multiplied by the number of months remaining in the Service term after

the first twelve (12) months, plus the balance of all billed but unpaid recurring and all outstanding nonrecurring charges. Cause is defined in Section 1.E.(1) [For Cause].

- (c) If the State terminates any Service, or individual circuit (other than pursuant to Sections 1.E.[1] [For Cause] and 1.E.[2] [For Non-Appropriation]) after installation and after the first twelve (12) months after commencement of any Service, but less than eighty percent (80%) through the Service term, the State will pay a termination charge of fifty percent (50%) of the monthly recurring charges for the Service (or the applicable fraction thereof), multiplied by the number of months remaining in the Service term after the first twelve (12) months, plus the balance of all billed but unpaid recurring and all outstanding nonrecurring charges.
- (d) The State may avoid termination charges for a circuit if a circuit of equal or greater value is ordered within thirty (30) days after termination of the original circuit. The disconnected circuit must have been in place at least twelve (12) months and the new circuit must be ordered for a period at least equal to the remaining contract term of the disconnected circuit.

E. TERMINATION

(1) For Cause: The State may terminate the Agreement or any Service Order issued pursuant to the Agreement when the Provider has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed ten (10) calendar days, after receipt of such notice. If the Agreement is terminated for default or non-compliance, the Provider will be responsible for any direct costs and/or damages incurred by the State for placement of a new Agreement. The State, upon termination for default or non-compliance, reserves the right to offset damages against payment due, and to take any legal action it may deem necessary. If the State terminates the Agreement for cause and such termination is subsequently determined by a court of competent jurisdiction to have been without cause, the termination shall be deemed a termination under Section 1.D.(2) [Early Termination] and the State shall only be responsible for payment in accordance with that section, which shall be the full extent of the State's liability.

(2) For Non-Appropriation: Provider acknowledges that the State is a governmental entity, and that the Agreement shall in no way be construed so to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature, as may exist from time to time. The State reserves the right to terminate the Agreement, in whole or in part, if, in its sole judgment, the Legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the State to continue payment or requires any give-back of funds as may be required for the State to continue payment, or if the Executive Branch mandates any cuts or holdback in spending. Any such termination shall take effect on ten (10) calendar days' notice and be otherwise effective as provided in the Agreement. It is understood and agreed that the payments provided for in the Agreement shall be paid from Legislative appropriations.

F. SAVE HARMLESS: The Provider shall defend, indemnify and hold the State harmless from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney's fees, to the extent caused by or arising from the negligent or wrongful acts or omissions under the Agreement of the Provider, its employees, agents, or subcontractors, that cause death or bodily injury, or damage to property, or arising out of a failure to comply with any state or federal statute, law, regulation or act. IN NO EVENT WILL PROVIDER BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. The Provider shall have no indemnification liability under this section for death, injury, or damage to the extent that the same is attributable to the negligence or misconduct of the State.

G. SUBCONTRACTING: The Provider may enter into any subcontract(s) relating to the performance of the Agreement or any part thereof. The Provider's use of subcontracts shall not in any way relieve the Provider of its responsibility for the professional and technical accuracy, adequacy, and timeliness of the work to be performed under the Agreement. The Provider shall be and remain liable for the performance of the work in accordance with the Agreement, as well as for any damages to the State caused by the negligent performance or non-performance of Provider's subcontractor(s).

H. ASSIGNMENT: Neither the Agreement nor any Service Order or any interest therein shall be transferred by the Provider to any other party without the approval, in writing, of the Administrator of the Division of Purchasing. Any attempt to assign the Agreement, without prior written approval, shall result in the termination of the Agreement or Service Order, at the sole discretion of the State. All rights of action for any breach of the Agreement by the Provider are reserved to the State. Notwithstanding the preceding and subject to the provisions contained herein, the Provider may assign the Agreement or any Service Order, without prior written consent, to an entity that controls, is controlled by, or is in common control with the Provider, or to any successor in interest to the Provider, or, if necessary, to satisfy the rules, requirements and/or regulations of any federal, local or state governmental agency. In the event of an assignment without prior written approval, the Provider shall remain fully responsible and liable for performance under the Agreement.

I. PATENT AND COPYRIGHT INDEMNITY

- (1) The Provider shall indemnify and hold the State harmless from, and shall defend at its own expense, any action brought against the State based upon a claim that the Services provided under the Agreement infringe any patent, trademark, copyright or trade secret. The Provider will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following:
 - (a) That the Provider shall be notified promptly in writing by the State of any notice of such claim;
 - (b) That the Provider shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, and State may select at its own expense an advisory counsel; and
 - (c) That the State shall cooperate with the Provider in a reasonable way to facilitate settlement or defense of any claim or suit.
- (2) The Provider shall have no liability to the State under any provision of this section with respect to any claim of infringement that is based upon:
 - (a) State content;
 - (b) Unauthorized modifications to the Telecommunications Services by the State;
 - (c) The Provider's adherence to the State's written requirements; or
 - (d) The use of the Telecommunications Services in violation of the Agreement.
- (3) Should the Telecommunications Services become, or in the Provider's opinion be likely to become, the subject of a claim of infringement, the State shall permit the Provider, at its option and expense, either to procure for the State the right to continue using the Telecommunications Services, to replace or modify the Telecommunications Services so that it becomes non-infringing, or, if those alternatives are not reasonably available, the Provider

may terminate the infringing Telecommunications Services without liability, except as otherwise provided.

J. FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any delay in performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, sabotage, cable cut not caused by Provider, or unusually severe weather; provided that in all cases of delay in performance, the Provider shall immediately notify the State by telephone, of such delay, and follow up such oral notice with prompt written notice detailing the cause for delay. The Provider shall make every reasonable effort to complete performance as soon as practicable. This clause does not apply to Service issues involving network outages caused by or related to a network that is not owned or controlled by Provider.

K. LIMITS OF LIABILITY: For Service issues, the limits of liability are as provided in Section 2.E. [Problem Management] below. For all other claims, except with regard to its indemnification obligations under Sections 1.F. [Hold Harmless] and 1.I. [Patent and Copyright Indemnity], Provider's aggregate liability shall be limited to twice the aggregate value of the Agreement or One Million and 00/100 Dollars (\$1,000,000.00), whichever is greater. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. Direct damages include costs or damages incurred by the State for placement of a new Agreement upon a termination for cause so long as the State:

- (1) Procures a substantially similar product or Service under the same terms and conditions as provided in the Agreement;
- (2) Procures such product or Service for the same term as the term applicable to the product or Service being replaced; and
- (3) Otherwise takes all reasonable steps to mitigate the amount of costs incurred.

L. WARRANTIES: Except as set forth in Section 2.C. [Performance Objectives], the Provider makes no warranties, express or implied.

2. SERVICE LEVELS

A. STATE RESPONSIBILITIES

(1) Reasonable Access to State Sites: The State will ensure reasonable access for the Provider's employees and Provider's subcontractors' employees to State-controlled sites where Provider's equipment is or will be installed. Access will be provided for the purposes of installation and preventative and corrective maintenance. To the extent access is outside the control of the State, the State will cooperate with Provider in obtaining access to the premises to install, operate, maintain, repair and remove Provider's equipment. Provider's employees or agents will comply with the State and/or federal access and security rules and regulations which have been communicated to Provider. Provider will provide notice to the State prior to entering the State's premises to install, maintain or repair any Provider equipment in connection with the Service(s) provided under the Agreement. Provider will only enter the State's premises if escorted by State authorized personnel, unless State grants written permission to Provider for unescorted access. Outage credits under applicable service level agreements will not be granted for service interruptions or times of service degradation during any period in which Provider or its agents are not afforded access to the State's premises if such access is reasonably necessary to prevent a degradation or restore Service.

B. PROVIDER RESPONSIBILITIES

(1) Filing Individual Case Based Contracts (ICBs): The State represents that less than ten percent (10%) of data traffic traversing the Provider's network will be interstate. The Provider shall file ICB's with the appropriate regulatory authority and supply copies to the Division of Purchasing.

(2) Assigning Account Team: The Provider shall assign an account team made up of the following functional positions:

- (a) An executive sponsor;
- (b) An account manager;
- (c) A network engineer; and
- (d) A billing specialist.

This account team will be assigned within thirty (30) calendar days after signing the Agreement. The executive sponsor will be empowered to authorize credits and mobilize Provider resources; the account manager will liaise with the State; the network engineer will assist with network design and capacity planning; and the billing specialist will correct erroneous billings.

(3) Providing an Escalation List: Upon request of the State, the Provider will submit an escalation list. The escalation list will contain the contact name, work telephone number, cell telephone number, e-mail address for key operations and technical contacts, and the Provider's twenty-four (24) hour network administration and control center. The Provider will deliver this list to the State within five (5) calendar days after request.

(4) Provide Constant Network Monitoring: Provider will maintain a twenty-four (24) hour, seven (7) day a week, three hundred sixty-five (365) days per year staffed network operations center to monitor Services provided to the State, in order to facilitate response to Major and Minor Trouble.

C. PERFORMANCE OBJECTIVES

(1) The Provider warrants its network elements, including, without limitation, hardware, equipment and cables, are designed to meet its Service objectives pursuant to this section. Provider represents that all interfaces and protocols extended to the State are designed to meet the specifications described in Provider's technical publications. These technical publications may include, but are not limited to, the ATM Forum, the Frame Relay Forum, EIA/TIA, ANSI or ITU. There are no other warranties expressed or implied. Remedies that apply to this area are contained in 2.E.(2) [Liquidated Damages].

(2) Further, the Provider will submit to the State, within five (5) business days after signing the Agreement, the Provider's standard targeted Service level objectives for its network for each of its offered Services. The objectives will include some or all of the following: availability, reliability, mean-time-to-repair ("MTTR"), mean-time-between-failure ("MTBF"), and bit error rate ("BER"). The targeted Service level objectives will become part of and incorporated into the Agreement as if set forth in full.

D. SERVICE MANAGEMENT

(1) Initiation of New Service: The State will place a Service Order for new Service either by fax or by e-mail. The due date for a Service Order will be mutually agreed upon when the State

places an Order. If the Provider cannot complete installation after thirty (30) calendar days past the established due date for a Service Order, the Service Order will automatically cancel, with no further liability to the State, and the State, at its option, may seek, without penalty, substitute services from another Provider. The State will track the status of a Service Order via telephone, written form, or, preferably, electronic form.

- (2) **Disconnection of Service:** The State will place a Service Order for discontinuance of Service either by fax or by e-mail. Except as otherwise provided in the Agreement, the State will provide the Provider with thirty (30) calendar days' written notice to discontinue Service. The State is not obligated to pay for Service beyond this thirty (30) day notice period unless an early termination charge applies, pursuant to Section 1.D. [Late Payment and Early Termination] above. The State will track the status of a Service Order via telephone, written form, or, preferably, electronic form.

E. PROBLEM MANAGEMENT

- (1) **Trouble Reports:** The State will place a Major or Minor Trouble report with the Provider either in written form (e.g., memo or fax), telephonically or, preferably, electronic form (e.g., web-based forms). Tracking the progress of problem resolution will be accomplished via telephonic or electronic notification (e.g., web-based or e-mail).

(2) Liquidated Damages

- (a) It is essential for the State's business that the Services be provided uninterrupted. The Provider agrees to delivery of Service as agreed upon pursuant to the Agreement and any Service Order issued pursuant to the Agreement, including the targeted Service level objectives submitted in accordance with Section 2.C.(2) [Performance Objectives] above. Failure to provide Services in accordance with the Agreement constitutes an event of default. The parties agree that actual damages to the State for the failure of or delay in delivery will be difficult or impossible to determine. Therefore, if the Provider misses the initial response time for a Major Trouble, the Provider may be assessed Two Hundred Fifty and 00/100 Dollars (\$250.00) per hour for each hour missed, up to eight (8) hours as described below, as liquidated damages, not as a penalty. If the Provider misses the initial response time for a Minor Trouble, the Provider may be assessed One Hundred Fifty and 00/100 Dollars (\$150.00) per hour for each hour missed, up to eight (8) hours as described below, as liquidated damages, not as a penalty. Any sums due to the State under this section will be handled as a credit against payments due from the State on subsequent invoices.
- (b) If either a Major or Minor Trouble has not been fully remedied after eight (8) hours from the time of the trouble report, Seven Hundred Fifty and 00/100 Dollars (\$750.00) per hour may be assessed as liquidated damages, not as a penalty, until such time as the Major or Minor Trouble is fully remedied. In no event will the sum of liquidated damages per outage exceed one months' recurring revenue for the circuit under repair. The State reserves the right to offset the amount of liquidated damages against other sums owing under the Agreement or any Service Order issued hereunder. The Provider shall not be assessed Service credits when delay arises out of cause beyond the control and without the fault or negligence of the Provider.

(3) Chronic Trouble Remedy

- (a) "Chronic Trouble Circuit" is a particular circuit for which:
- (i) Three (3) or more trouble tickets have been opened for the same trouble within a ninety (90) day period;

(ii) One (1) Service outage has occurred for a duration of more than twenty-four (24) hours; or

(iii) Service outages accumulating one hundred twenty (120) hours or more over any period of one hundred eighty (180) consecutive calendar days and the cause of each such trouble is determined to be in Provider's network and is not the result of a cause beyond the control and without the fault or negligence of the Provider.

(b) Whenever State or User reports to Provider, and Provider confirms that a Service is a Chronic Trouble Circuit, Provider will immediately perform a detailed investigation and report the findings to the State and the User. The State or User may disconnect a specific Chronic Trouble Circuit without incurring termination liability or further obligation, except for payment due and owing for Services received prior to disconnection, by providing Provider written notice, unless such circuit has remained trouble-free for a period of thirty (30) days prior to such termination notice.

F. PLANNED OUTAGES: The Provider shall provide at least twenty-four (24) hours advance notice to the State, via e-mail or telephone, of any planned outages affecting the Provider's network.

G. BILLING AND CREDITS

(1) Billing Address and Interval: The Provider will render a timely, accurate and complete invoice to the proper billing address. The billing address will be identified on the Service Order. Further, the billing "end date" will be mutually agreed upon between the State and the Provider.

(2) Invoicing for a Finished Service: Where by necessity a finished Service is provisioned by the Provider and other telecommunications carriers, the Provider will submit a single consolidated invoice.

(3) Billing Elements: Invoices submitted by the Provider must include applicable one-time charges, recurring charges and any prorated charges.

(4) Application of Credits: The State will notify the Provider in writing of any billing or administrative errors within sixty (60) calendar days of receipt of invoice, including identifying the amount of the apparent error. The Provider shall respond in writing to such notification within fifteen (15) calendar days of receipt. Failure to so respond shall be deemed agreement by the Provider to the amount of the claimed mistake. Credits for any billing or administrative errors shall be applied by the Provider to the proper account within forty-five (45) calendar days of notification of such error. The State reserves the right to offset amounts in dispute pursuant to this section pending resolution thereof.